IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 30651 of 2007(Y)

(IN I.A.2409/2007 IN O.P.312/2004 ON THE FILE OF DISTRICT COURT, KOZHIKODE)

PETITIONER:

MRS.THANKAM,
AGED 73 YEARS,
W/O.A.V.CHOYI,
AYANIKKATTU VENGALAPURATH,
P.P.PANTHEERANKAVU,
KODAL AMSOM KAILAMADAM DESOM,
KOZHIKODE.

BY ADV. SMT.PRABHA R.MENON

RESPONDENTS:

1. **MRS. BAZEENA, AGED 35 YEARS,**
   W/O.P.SUNILKUMAR, 'BHUVANA',
   KUDITHODU, CHAVYUR AMSOM, DESOM,
   P.O.CHEVAYUR, KOZHIKODE.

2. **NEDOLI BABU,**
   S/O. KUNHIPERACHAN,
   PANTHERERANKAVU AMSOM,
   KODAL DESOM.

3. **MEKKAYIL ANOOP KU;MAR,**
   S/O.SUKUMAR,
   CHERUVANNOOR AMSOM, DESOM.

4. **THALANAR THODUKAYIL MOIDEEN KOYA,**
   S/O.SAIDALVI, THOTTOOLI,
   PANTHEERANKAVU AMSOM, KODAL DESOM.

5. KANHIRATTU AHAMEDKOYA @ FAIZAL,
S/O.MAMMED KOYA, THOTTOOLI,
PANTHEERANKAVU AMSOM, KODAL DESOM.

6. THAMPURANKANDAY SUDHAKARAN,
S/O.T.K.NARAYANAN,
BEYPORE AMSOM, DESOM.

7. SUNIL KUMAR,
S/O.RAMACHANDRAN, PUTHUR AMSOM,
KARANNUR DESOM, KOZHIKODE.

8. KANDIYIL PREMARAJAN,
S/O.KANDAN, PANTHEERANKAVU AMSOM,
KAILAMADAM DESOM,KOZHIKODE.

9. KANDIYIL MINIJA, D/O.VASU,
PANTHEERANKAVU AMSOM,
KAILAMADAM DESOM KOZHIKODE.

10. POTTANGADI RAMACHANDRAN,
S/O.ACHUTHAN, LAKSHMI VIHAR,
PUTHIYANGADI AMSOM DESOM, KOZHIKODE.

11. URUMI PRASANTH,
S/O.SREENIVASAN,
'MADAVIKA', KALATHINKUNNU AMSOM,
DESOM, KOZHIKODE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N. KRISHNAN, J.

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W.P.C. NO. 30651 OF 2007

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Dated this the 16th day of October, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the District Judge, Kozhikode in I.A.2409/07 in O.P.312/04. By the said order the Court directed "Examination of the mentally ill person and the Doctor is fixed to be had on 17.10.07 at 10.00 A.M." The grievance of the writ petitioner is that the said Choyi was an inpatient in the P.V.S. Hospital, Kozhikode and with the tubes etc. he had been discharged and he is directed to take rest for three months and that he is not in a fit state of health to depose before any person.

2. If a person is really unwell and he is not in a mentally fit condition on account of the ailment to give evidence, there is no point in examining him by the Commissioner. But considering the peculiar facts and circumstances, the conduct and attitude of the parties in this case I feel this is a case where the Court must get a first

hand information about the condition of the said Choyi. Further by forcing him to do something it shall not cause unnecessary embarrassment or deterioration in his health condition. Therefore, instead of examining him on 17.10.07 at 10.00 A.M. I direct the Commissioner to visit the house of Sri.Choyi, if possible, with the counsel appearing for both the parties, see his condition, file a report before the Court and then the Court should consider whether he is in a fit state of mind or in a fit state of health to be questioned by anybody and pass orders accordingly. The question of examination of Doctors can be considered thereafter. Therefore, the order of the learned District Judge is modified to that extend. The learned counsel for the writ petitioner is requested to inform all concerned so that unnecessary presence of two Doctors can be averted.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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